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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Annual report of the United Nations High Commissioner for Human Rights

Corrigendum

Paragraph 105 *should read*

105. **We must recall the imperative of dignity set forth in the Declaration on the Right to Development, and return to the vision of the Universal Declaration of Human Rights, mandating, as it did, a social and international order in which all the rights and freedoms set forth in that Declaration can be fully realized.**

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Annual report of the United Nations High Commissioner for Human Rights

Addendum

Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala*

Summary

The present report describes the work undertaken by the Office of the United Nations High Commissioner for Human Rights in Guatemala (OHCHR-Guatemala) during 2013. In compliance with its mandate, OHCHR-Guatemala conducted monitoring activities in order to provide technical assistance and advice to State institutions and civil society in the implementation of international human rights obligations and the recommendations of human rights mechanisms. OHCHR-Guatemala concluded the first phase of the Maya Programme, which contributed to building judicial precedents related to indigenous peoples.

Effective coordination among State institutions enabled Guatemala to take unprecedented steps to combat impunity. Despite the fact that the Constitutional Court overturned, in May, the verdict against Efraín Ríos Montt, Guatemala made history by becoming the first country in the world to convict a former head of State for genocide in line with international standards. Proceedings will resume in 2015.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is being reproduced in English and Spanish only.

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High levels of violence, including against women, continued to affect the enjoyment of human rights. The report also describes the situation of indigenous peoples and their struggle for collective rights. Energy and extractive projects, particularly in indigenous territories,** were one of the main sources of unrest and, occasionally, violence. In most cases, the common denominator of social conflicts was the failure to inform and to consult with indigenous and other communities concerned. The High Commissioner recognizes some positive steps taken in the promotion of rural development and the fight against malnutrition, and welcomes the establishment of a Global Compact Local Network and encourages companies and other stakeholders to adhere to the Compact's principles.

** The term territories is used in this report in accordance with the concept set out in article 13, paragraph 2, of International Labour Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

Annex

[English and Spanish only]

Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala

Contents

		Paragraphs	*Page*
I.	Introduction	1–2	4
II.	National context	3–8	4
III.	Overall human rights situation	9–17	5
IV.	Justice	18–40	6
	A. Fight against impunity	18–25	6
	B. Transitional justice	26–31	7
	C. Independence of the judiciary	32–33	8
	D. Justice and indigenous peoples	34–37	9
	E. Deprivation of liberty	38–40	9
V.	Security	41–44	10
VI.	Human rights defenders	45–49	11
VII.	Women's rights	50–55	12
	A. Violence against women	50–53	12
	B. Sexual and reproductive rights	54–55	12
VIII.	Rights of indigenous peoples	56–64	13
	A. Participation and consultation	57–58	13
	B. Lands, territories and natural resources	59–64	14
IX.	Economic and social rights	65–76	15
	A. Right to food	68–69	15
	B. Labour rights	70–74	16
	C. Right to housing	75–76	17
X.	Business and human rights	77–78	17
XI.	Activities of the Office of the United Nations High Commissioner for Human Rights in Guatemala	79–89	17
XII.	Cooperation with human rights protection mechanisms	90–93	19
XIII.	Recommendations	94–102	19

I. Introduction

1. On 10 January 2005, the United Nations High Commissioner for Human Rights signed an agreement with the Government of Guatemala for the establishment of a country office (OHCHR-Guatemala). Under the agreement, the functions of OHCHR-Guatemala are to monitor the human rights situation and provide advice to State institutions and civil society. The agreement was extended for a second time, for three years, on 19 September 2011.

2. The present report provides an overview of the human rights situation in Guatemala, with a special focus on the justice system and the fight against impunity. It also describes the work conducted by OHCHR-Guatemala and includes a series of recommendations.

II. National context

3. During the second year of his term, President Otto Pérez Molina continued to prioritize the Covenant for Security, Justice and Peace, along with the Fiscal and Competitiveness Covenant and the Zero Hunger Covenant.

4. The questioning of the Minister of Culture and Sports paralysed the congressional agenda throughout most of 2013. By the end of the legislative session, a first package of laws on transparency in the management of public funds had been adopted.[1] The approval of a second legislative package, which is crucial for strengthening the anticorruption mechanisms, is still pending.

5. Several allegations of corruption involving high-level officials in areas such as customs, ports and procurement were made public. In May, former President Alfonso Portillo was extradited to the United States of America on money laundering charges. Guatemala ranked 123rd out of 177 countries in Transparency International's 2013 Corruption Perceptions Index.[2]

6. Guatemala continued to implement a project for the consolidation of peace, with funding from the United Nations Peacebuilding Fund, which contributed to strengthening capacities in the administration of justice. The mandate of the International Commission against Impunity in Guatemala (CICIG) was renewed until 2015, and Iván Velásquez, appointed as Commissioner by the United Nations Secretary-General, took office in October.

7. In November, the Government signed on to the second phase of the Maya Programme, jointly implemented by OHCHR-Guatemala, the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF) and financed by Norway. The programme will continue to promote indigenous peoples' rights in the areas of education, political participation and justice.

8. Guatemala hosted the forty-third session of the General Assembly of the Organization of American States, and, in this setting, promoted a comprehensive policy to address the drug problem.

[1] Decree 13-2013.

[2] See www.transparency.org/cpi2013/results.

III. Overall human rights situation

9. The High Commissioner welcomes the unprecedented steps taken by the State in the fight against impunity, led by the Attorney General's Office (Ministerio Público) (see para. 18 below). These were possible due partly to the effective coordination and cooperation between the Attorney General's Office, the Ministry of the Interior (Ministerio de Gobernación), the National Civil Police (PNC), and the National Institute of Forensic Science in Guatemala (INACIF), with the support of CICIG in some cases.

10. In order to avoid setbacks, consolidate the achievements in the fight against impunity, and strengthen the independence of the judiciary it is critical that the nominating commissions — responsible for the selection of magistrates for the Supreme Court of Justice and the Courts of Appeal, the Attorney General and other authorities in 2014 — apply the principles of objectivity, suitability, transparency and accountability in this process.

11. Seventeen years after the signing of the Peace Agreements, the State continued to take steps to face its past as a prerequisite for strengthening the rule of law. As an illustration of this trend, a historic trial took place against former head of State Efraín Ríos Montt and former chief of military intelligence José Mauricio Rodríguez Sánchez, on charges of genocide and crimes against humanity against the Ixil people in 1982 (see paras. 26–28 below).

12. Human rights defenders were subjected to media campaigns and attacks aimed at discrediting their work. These attacks were directed against the defenders of victims of human rights violations during the internal armed conflict; environmental rights defenders; and indigenous and peasant activists (see paras. 45–49 below). In some cases high-level State officials also questioned their work.

13. The enjoyment of the right to life continued to be affected by the high levels of violence and food insecurity. According to INACIF, there were 5,156 violent deaths, including 664 women, 356 boys and 122 girls.[3] According to the PNC, 81 per cent of homicides were committed with firearms, compared to the world average of 42 per cent.[4] Despite the measures taken by the State to fight organized crime, three massacres were recorded by OHCHR-Guatemala: in Las Cruces, Petén, 5 people died in April; in Salcajá, Quetzaltenango, 9 police officers were killed in June; and in San José Nacahuil, Guatemala, 11 people were murdered in September. There were 43 deaths by lynching — an increase of 169 per cent.[5] In 2013, 106 children under the age of 5 died due to causes related to acute malnutrition.[6]

14. The inequality gap persists throughout the country. According to the Rural Poverty Map, the majority of the 55 municipalities with poverty levels ranging between 85 and 97 per cent are indigenous.[7] These municipalities also account for more than 60 per cent of chronic malnutrition among children under age 5.[8]

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[3] *Source*: INACIF, data for January–October 2013.

[4] *Small Arms Survey 2012*, p. 11. See www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2012/eng/Small-Arms-Survey-2012-Chapter-01-EN.pdf.

[5] *Source*: National Commission in Support of the Programme for the Prevention of Lynching, data for January–October 2013.

[6] *Source*: Health Information Management System (December).

[7] See National Statistics Institute, *Mapas de pobreza rural en Guatemala 2011*.

[8] World Food Programme and Secretariat for Food and Nutritional Security (SESAN), "Mapeo y análisis de la desnutrición crónica en Guatemala" (2012).

15. Although the recent Tax Update Law allowed for a substantial increase in income tax collection, other factors, such as the low rate of customs duty collection, the reduction in the vehicle circulation tax and the weakness of the Tax Administration System, limited the State's revenue-raising capacity. With national tax revenue of under 11.5 per cent of the gross domestic product, social investment maintained the same levels as in 2012.

16. Energy and mining projects, especially those in indigenous territories, were one of the main sources of unrest. The conflicts related to these projects occasionally led to episodes of violence, such as in El Escobal and Santa Cruz Barillas (see para. 63 below). In May, a state of emergency (*estado de sitio*) was declared in some municipalities in the departments of Jalapa and Santa Rosa. A common denominator in these social conflicts was the failure to inform and to consult with indigenous and other local communities potentially affected by these projects.

17. In line with the recommendations of the High Commissioner and the Special Rapporteur on the rights of indigenous peoples, the President presented a bill that, if approved, would require a two-year moratorium on licences for the exploitation of metallic minerals. This could be a window of opportunity for a comprehensive process that should include not only a reform of the Mining Law, but also the strengthening of the environmental instruments and regulation of prior consultation, with the participation of indigenous peoples.

IV. Justice

A. Fight against impunity

18. There was significant progress in the fight against impunity. Court decisions were issued in high-impact cases related to organized crime, including cases of corruption, kidnapping, extortion, rape and murder. The role of the high-risk courts was crucial in these decisions. Coordination among State institutions in criminal investigation and prosecution led to the dismantlement of several corruption networks, including one involving the mayor of La Antigua and members of the municipal council; the arrest of the alleged perpetrators of the above-mentioned massacres of Nacahuil and Salcajá (para. 13); and the arrest of alleged drug traffickers, among others.

19. However, there was little progress in the implementation of the Law of the General Directorate of Criminal Investigation, which would contribute to ensuring a sustained coordination among institutions.

20. In comparison to 2010, there was a 15 per cent increase in scientific evidence requests from the Attorney General's Office to INACIF in the investigative phase, resulting in accusations that were no longer based primarily on witness testimony. This contributed to a 6.47 per cent increase in the number of accusations as compared to 2012, as well as to an increase of 9.4 per cent in the number of convictions.[9] A positive development was the establishment, in January, of the Criminal Analysis Unit in the Attorney General's Office, with the mandate to advise prosecutors on strategic decisions related to criminal proceedings.

21. The purge within the Attorney General's Office did not advance in the same way. Congress failed to appoint the members of the Council of the Attorney General's Office —

[9] *Source*: Attorney General's Office.

the body responsible for hearing appeals in disciplinary proceedings. As a result, it was not possible to execute sanctions in 87 per cent of the cases because they were under appeal.[10]

22. The new management model of the Judiciary (Organismo Judicial) helped reduce the judicial backlog. In Guatemala City, the percentage of cases solved (ending with a verdict or other forms of termination) between 2010 and 2013 increased by 48 per cent in first instance criminal courts and by 62 per cent in criminal sentencing tribunals.[11] The Judiciary took important steps in the area of infrastructure and formulated proposals for legal and regulatory reforms, such as the Code of Civil and Commercial Procedure, aimed at reducing the backlog in non-criminal jurisdictions (civil, family, labour, children and adolescents).

Human rights cases

23. OHCHR-Guatemala registered progress in the prosecution of human rights violations. In August, High-Risk Tribunal "B" convicted three police officers, including the former chief of criminal investigation, for the extrajudicial execution of 10 inmates in 2005 and 2006, related to a breakout from the "El Infiernito" Detention Centre and the "Pavo Real" plan in the Pavón Detention Centre, respectively.[12] Two people face prosecution in Spain and Switzerland for the same events, and one person was acquitted in Austria in October.

24. In January, an appeals judge issued a verdict, substantiated by international standards, which repealed a circular of the Penitentiary System Directorate preventing transsexual persons deprived of liberty from wearing female clothing or having long hair.

25. Regarding the justiciability of economic, social and cultural rights, a judge for children and adolescents issued four verdicts recognizing the State's responsibility for the violation of the right to food of two boys and three girls in Camotán, Chiquimula. The judge ordered the State to provide comprehensive measures of reparation, which were partially implemented.

B. Transitional justice

1. The genocide trial

26. In May, High-Risk Tribunal "A" sentenced Efraín Ríos Montt to 80 years' imprisonment and acquitted former intelligence chief José Mauricio Rodríguez Sánchez, demonstrating that it is possible to prosecute former high-level State officials for genocide in their own country. During the trial, the testimonies of nearly 100 indigenous victims were heard, in their own languages, and, for the first time, in an oral and public debate indigenous women spoke about the sexual violence they had suffered during the internal armed conflict.

27. However, the use of over 70 different delay tactics by defence lawyers, especially injunctions (*amparos*) in various instances, was aimed at obstructing justice. Only 10 days after the judgement was issued, the Constitutional Court nullified the sentence and reverted the process to an earlier stage. The resumption of proceedings has been tentatively scheduled for 5 January 2015. This situation has affected the victims' right to justice, after

[10] Ibid.

[11] *Source*: Judiciary (Organismo Judicial).

[12] See E/CN.4/2006/10/Add.1 and Corr.2, para. 13.

they waited for over 30 years. The plaintiffs then filed a case before the Inter-American Commission on Human Rights.

28. The debate outside the courts was marked by media campaigns to discredit judges, prosecutors, human rights defenders and members of the international community. There were also instances of racial hatred against indigenous peoples. Public statements by the private and other sectors tested the independence of the judiciary. However, the events described in detail by the witnesses during the proceedings, and confirmed by scientific evidence, were never refuted.

2. Other developments

29. In March, former military commissioner Isidro Cardona Osorio was convicted for the 1982 enforced disappearance of Edgar Leonel Paredes Chegüén. Two former directors of the now defunct National Police were convicted for the enforced disappearance, in 1984, of the student Edgar Fernando García. In September, a commander of a non-State armed group was charged with murder and crimes against humanity in relation to acts committed in 1988 against civilians in the village of El Aguacate, Chimaltenango.

30. In an unequivocal statement, in August, the Constitutional Court affirmed the inadmissibility of amnesties and statutes of limitations in cases of serious human rights violations, in conformity with the State's international obligations. The High Commissioner hopes that this line of jurisprudence will be maintained. In the Ríos Montt case, there is a pending judicial decision on whether to apply the Law on National Reconciliation, which rules out amnesty in relation to genocide, crimes against humanity and other international crimes, or an older law (Decree 8-86), which granted broad amnesty for political crimes.

31. Progress was made in the mapping of institutional archives, which is crucial both in terms of ensuring access to information and documenting paradigmatic cases from the past. However, there is still no legal framework to safeguard these archives, as mentioned in previous reports.[13]

C. Independence of the judiciary

32. The Supreme Court of Justice, with OHCHR-Guatemala's support, presented to Congress a bill to reform the Law on the Judicial Career. Congress should give priority to the adoption of this bill, further incorporating OHCHR-Guatemala's recommendations to ensure the separation of the administrative and jurisdictional functions, in accordance with the principle of judicial independence. The approval by the Supreme Court of internal mechanisms to strengthen due process guarantees in disciplinary proceedings, including regulations on ethical standards, is another positive step.

33. While threats against judicial personnel continued, there was little progress in investigating and prosecuting these cases, confirming the need to strengthen the Judicial Operators Unit of the Attorney General's Office. Judges, prosecutors, victims and witnesses were subject to threats, particularly in the context of the genocide trial. The Attorney General also suffered constant attacks and media campaigns that sought to discredit her work. Three magistrates suffered public attacks as a result of decisions based on international standards on indigenous peoples (see para. 62 below). In February, attorney Lea de León, who had litigated high-impact cases, was murdered.

[13] A/HRC/22/17/Add.1, para. 41; A/HRC/19/21/Add.1, para. 38.

D. Justice and indigenous peoples

34. Indigenous authorities and organizations continued to turn to the judicial system to defend their rights. Most of the cases questioned the granting of licences for mining or energy projects without prior consultation. In three cases related to the granting of hydroelectric licences in the Ixil region, the Human Rights Ombudsman (Procurador de los Derechos Humanos) filed amicus curiae briefs in the Constitutional Court in support of the plaintiffs' claims.[14]

35. The Constitutional Court handed down five sentences on the collective rights of indigenous peoples, in response to constitutional injunctions or *amparos* related to consultation (see para. 57 below), collective property (see para. 59 below), and the use of indigenous names (two cases against the National Registry Office[15]). Although in some cases the Court did not rule in favour of the plaintiffs, the progressive incorporation of international standards in the Court's jurisprudence established important precedents for future litigation.

36. Given the lack of a specific legal framework, the coordination between the indigenous and the ordinary jurisdictions continued to face challenges. Despite this, two decisions by the Supreme Court's Criminal Chamber acquitted K'iche' authorities of Totonicapán who had been detained after administering justice in their respective communities.[16] These decisions followed "a process of development of jurisprudential doctrine that defines indigenous law as a set of principles and norms … coexisting with State law under a paradigm of legal pluralism".[17]

37. In spite of these incipient advances in jurisprudence, indigenous peoples continue to face serious obstacles to access to the ordinary justice system. The establishment of the Judiciary's Centre for Indigenous Legal Translation and Interpretation, in August, and the creation of the Department on Indigenous Peoples in the Attorney General's Office, in July, could help overcome these obstacles.

E. Deprivation of liberty

38. The penitentiary system registered an increase in the number of persons deprived of liberty, further exacerbating the overcrowding in jails (153 per cent above capacity). More than 50 per cent of detainees are in pretrial custody (7,445 men and 894 women). In the past five years, the number of women in detention doubled (from 650 in 2008 to 1,452 by 31 August 2013).[18]

39. Despite the measures taken by the State to control detention centres and fight corruption within them, criminal networks continued to operate within and outside these centres. The case of a military officer convicted of murdering Bishop Juan Gerardi in 1998, who was found by authorities outside the penitentiary where he was serving his sentence; as well as the Nacahuil massacre (see para. 13 above), allegedly ordered from within a detention centre, were among the most notorious cases.

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[14] Case file 1149-2012, consolidated case files 4957-2012 and 4958-2012, and consolidated case files 5237-2012 and 5238-2012.

[15] Case files 4656-2012 and 4877-2011.

[16] Case files 01004-2012-01848 and 01004-2012-01524.

[17] Case file 01004-2012-01848, p. 6.

[18] Colectivo Artesana, *Situación del sistema penitenciario y el análisis del presupuesto como herramienta de auditoria social* (2013). See www.reglasdebangkokguatemala.org/?mo=_5&uni=40.

40. Despite the creation, in 2012, of the inter-institutional working group to implement precautionary measures granted by the Inter-American Commission on Human Rights on behalf of people with mental disabilities confined in the Federico Mora National Mental Health Hospital, and the efforts of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH), the infrastructure for and nutritional and health conditions of the inmates continue to be of concern.

V. Security

41. Important initiatives were introduced in the context of the Security, Justice and Peace Covenant,[19] such as the creation in March of the Third Vice Ministry within the Ministry of the Interior, on the prevention of violence and crime. In addition, in accordance with proposals by the National Commission for Police Reform, two regional offices of the Police Academy and one school for PNC officers were established, incorporating about 3,000 new police members.[20] Due to its broad scope of application, some aspects of the Covenant are still in an incipient stage, in areas such as deprivation of liberty, local security committees, and prevention of armed violence. It is thus not possible to adequately assess its impact.

42. In response to the events in Totonicapán in October 2012,[21] the High Commissioner recommended that the involvement of the military in internal security should be exceptional and temporary, and subject to civilian control.[22] However, the use of joint military and police task forces increased, with limited effect on the improvement of security. Approximately 1,500 military were deployed in Escuintla, Huehuetenango and Zacapa.[23] The Maya Task Force, deployed in zone 18 of the capital, with more than 1,100 army and 124 police officers,[24] was able to reduce violent deaths locally by 32 per cent; however, property and sex-related offences increased.[25] At the national level, the downward trend in violent deaths since 2010 was reversed in 2013. According to diverging statistics from INACIF and the PNC, the homicide rate in 2013 increased by between 4.3 and 6.5 per cent in comparison to 2012; the rate for women increased by between 17 and 26 per cent.[26]

43. Some progress was observed in compliance with the law on regulating private security companies (Decree 52-2010), including the adoption, in October, of a regulation to implement the law,[27] and the granting of the first operating licences, in November. However, significant challenges persist in guaranteeing greater control of these companies, since the majority continue to operate without a licence and many individual security providers do not comply with the law.

44. Additionally, OHCHR-Guatemala registered new complaints of abuse by security company personnel during protests against mining projects. In May, a security official from

[19] See A/HRC/22/17/Add.1, para. 18.

[20] *Source*: PNC, data for January–October 2013.

[21] A/HRC/22/17/Add.1, para. 11.

[22] Press statement of 15 March 2012, p. 3. See www.ohchr.org.gt/documentos/comunicados/PRESS%20CONFERENCE%202%20rev%20CLEAN%20%20espanol.pdf.

[23] "Escuadrones de seguridad vigilan Escuintla, Zacapa y Huehuetenango", *Diario de Centro América*, 19 June 2013. See www.dca.gob.gt/index.php/template-features/item/20640-fortalecerán-la-seguridad.html. See also www.guatemala.gob.gt/index.php/2011-08-04-18-06-26/item/4171-gobierno-presenta-tres-escuadrones-de-seguridad-ciudadana.

[24] *Source*: Ministry of the Interior.

[25] *Source*: PNC, data for January–October 2012, January–October 2013.

[26] *Source*: INACIF and PNC, data for January–October 2012, January–October 2013.

[27] Government Order 417-2013.

the San Rafael mine was charged with bodily injury and obstruction of justice during an attack by the company's private security guards against a group of demonstrators (see para. 63 below). In July, the Superior Court of Ontario, Canada agreed to hear three cases against HudBay Minerals for homicide, bodily injury and sexual violence allegedly committed by security personnel in El Estor, Izabal. The absence of mechanisms within the business sector, particularly among extractive companies, to guarantee that company security practices are in compliance with international standards, is of concern.

VI. Human rights defenders

45. According to the Unit for the Protection of Human Rights Defenders of Guatemala (UDEFEGUA), attacks and threats against human rights defenders increased in the past five years. By September, 18 murders had been reported. These included the killings of Carlos Hernández Mendoza, a member of the Camoteca Peasants' Association, in Chiquimula, in March; Excaltación Marcos Ucelo, a member of the Council of Santa María Xalapán; and Daniel Pedro Mateo, leader of the Social Movement of Santa Eulalia in Santa Cruz Barillas, in April. These three cases took place in the context of conflicts related to the exploitation of natural resources.

46. During the year, the offices of the Association for the Advancement of the Social Sciences (AVANCSO) and the Central American Institute for Social Democracy Studies (DEMOS), the organization of the current Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, were broken into, and computers and documents stolen. According to preliminary investigations, these cases were common crimes, and the alleged perpetrators were detained. A break-in at the home of an attorney of the Centre for Legal Action in Environment and Social Issues (CALAS) was also reported; to date there has been no progress in the investigation.

47. OHCHR-Guatemala observed that protests by communities and social organizations against projects for the exploitation of natural resources frequently triggered criminal proceedings against protestors with charges such as terrorism and criminal conspiracy, which appear disproportionate to the gravity of the alleged offences.[28] Several cases were dismissed by the judiciary due to the lack of evidence and the inability to prove individual responsibility. Examples include the case of Rubén Herrera, a member of the Assembly of Peoples of Huehuetenango for the Defence of Territory, charged on 12 counts (including terrorism), who was released in May, and the cases of 26 people detained in San Rafael las Flores, in April, on charges of "unlawful assembly" and attacks on public authorities, who were subsequently released due to lack of evidence.

48. In August, the Human Rights Ombudsman issued a resolution, based on human rights standards, in which he declared that all publications and speeches that stigmatize and discredit human rights defenders are an attack against their dignity, incite hatred and delegitimize their work.[29]

49. The Unit for the Analysis of Attacks against Human Rights Defenders lost relevance, despite efforts by several institutions to reclaim its role. The representatives of the institutions participating in the Unit were replaced by technical officers, which contributed to the decision by some civil society organizations to no longer participate in

[28] A/HRC/22/17/Add.1, para. 49.

[29] See www.pdh.org.gt/archivos/descargas/Documentos/Resoluciones/resolucin_por_denuncia_de_amenazas_a_defensores_de_derechos_humanos.pdf.

the Unit. After the murders of four journalists, the Government launched a protection mechanism for media workers with the support of UNESCO and OHCHR-Guatemala.

VII. Women's rights

A. Violence against women

50. The establishment of the Special Cabinet for Women under the Vice-President's Office triggered a process of inter-institutional coordination in favour of women's rights. Gender units, which are to provide advice to the President regarding the formulation of gender policies, were activated within ministries and secretariats.[30] However, there were delays in the allocation of funds for the Comprehensive Support Centres for Women Survivors of Violence (CAIMUs).

51. In 2013, 198 reports of femicide and 31,836 reports of other forms of violence against women were filed.[31] There is no disaggregated data for indigenous and Afro-descendant women. Given the dimensions of the problem, the strengthening of the model for comprehensive assistance to victims in five units of the Attorney General's Office throughout the country was an important step.

52. Specialized courts established to handle cases of femicide and other forms of violence against women proved effective in issuing verdicts. Of the 556 judgements in this area, 427 were delivered under this specialized jurisdiction.[32] Despite the opening of new courts and tribunals in Escuintla and Izabal, the specialized tribunals face challenges regarding the expansion of their coverage, and regarding the standardization of policies with those of ordinary tribunals.

53. The Secretariat against Sexual Violence, Exploitation and Human Trafficking (SVET) strengthened inter-institutional coordination for the implementation of the Law against Sexual Violence, Exploitation and Human Trafficking. However, the lack of statistical information and the high degree of impunity in these crimes (93 per cent) is of concern.[33]

B. Sexual and reproductive rights

54. Despite recent legislative progress,[34] data continue to reveal a disturbing reality. A total of 373 women died of pregnancy-related causes. Abortions performed under dangerous conditions continued to be the fourth leading cause of maternal death.[35] OHCHR-Guatemala is concerned about the State's position regarding its "unqualified respect for the right to life from the moment of conception",[36] presented in response to the

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[30] Government Order 260-2013.

[31] *Source*: Attorney General's Office.

[32] *Source*: Judiciary.

[33] Human Rights Ombudsman, "Informe de situación sobre trata de personas en Guatemala 2012", p. 16.

[34] Law on Universal and Equal Access to Family Planning Services (Decree 87-2005) and the Law on Healthy Maternity (Decree 32-2010).

[35] *Source*: Observatory on Reproductive Health (OSAR) (September 2013).

[36] Montevideo Consensus on Population and Development, outcome document of the first session of the Regional Conference on Population and Development in Latin America and the Caribbean, Montevideo, 12–15 August 2013, p. 38. See www.eclac.cl/publicaciones/xml/2/51922/MontevideoConsensus.pdf.

Montevideo Consensus on Population and Development, which calls for the availability of safe abortion services in those cases where abortion is legal under relevant national legislation.

55. The Health Information Management System recorded 2,906 pregnancies among girls between 10 and 14 years old (January–June 2013), despite State efforts in that area. In this context, SVET reported 457 cases of rape to the Attorney General's Office.[37]

VIII. Rights of indigenous peoples

56. The protection of the rights of indigenous peoples continued to be limited by inadequate legislation and the weakness of the institutions with mandates on indigenous issues. Funding for the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA), the Office for the Defence of Indigenous Women (DEMI) and the Guatemalan Fund for Indigenous Development (FODIGUA) represented only 0.009 per cent of the national budget. In August, the President announced the creation of a Cabinet for Indigenous Peoples and Intercultural Affairs. This initiative, in addition to other commitments made by the Government in 2012,[38] reflects the increasingly widespread perception of the need for a debate on the design and mandate of these agencies.

A. Participation and consultation

57. The obligation of the State to consult with indigenous peoples was reiterated, as a matter of principle, in two Constitutional Court judgements; however, the Court failed to overrule administrative and legislative measures that were adopted without prior consultation with indigenous peoples. In February, the Court dismissed an action challenging the constitutionality of the Mining Law, which alleged lack of consultation with indigenous peoples in the adoption of the Law. In its judgement, the Court confirmed its jurisprudence on the State's duty to consult with indigenous peoples under International Labour Organization (ILO) Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries, but concluded that it was not applicable in relation to the Mining Law because its "scope is broad and not restricted to any particular territorial region or specific cultural or ethnic group".[39] Also in February, the Court granted an injunction (*amparo*) filed by Q'eqchi' communities that had not been consulted on the Entre Ríos hydroelectric project in Lanquín, Alta Verapaz.[40] However, the Court decided not to cancel the project, so as not to affect the country's development policies.

58. The Ministry of Labour and Social Welfare continued to coordinate an ad hoc inter-ministerial committee established to draft a protocol for consultations with indigenous peoples. Without waiting for the results of this process, the Ministry of Energy and Mines simultaneously granted three new mining licences and four licences for hydroelectric projects[41] without prior consultation. In response, indigenous peoples held eight new "good-

[37] Human Rights Ombudsman, *Análisis de la situación de embarazos en niñas y adolescentes en Guatemala 2011-2013*, twenty-fifth page and thirty-fourth page. See http://osarguatemala.org/userfiles/INFORME%20DE%20EMBARAZOS%20EN%20NINAS%20Y%20ADOLESCENTES.pdf.

[38] A/HRC/22/17/Add.1, para. 61.

[39] Case file 1008-2012, p. 38.

[40] Case file 4419-2011.

[41] *Source:* Ministry of Energy and Mines.

faith community consultations", which were not taken into account as starting points for broader consultation processes involving the State.

B. Lands, territories and natural resources

59. The land rights of indigenous peoples continued to be circumscribed by legislation that fails to meet international standards. In February, the Constitutional Court resolved a claim that challenged the constitutionality of part of the Civil Code because it did not regulate indigenous communal property.[42] The Court recognized that this was an "issue that was pending in the legislative history of the country".[43]

60. The reform of the administrative procedures of the Land Fund (FONTIERRAS) paved the way for the recognition of indigenous communities as direct collective rights holders, without resorting to formulas that are foreign to indigenous forms of organization, such as peasant associations.

61. The Secretariat for Agrarian Affairs continued to hold round-table discussions on ancestral land claims in the Xinka communities of Santa María Xalapán, citing a Royal Decree from 1717. This unprecedented process highlights the importance of taking a historical approach to the resolution of indigenous land conflicts.

62. A number of development projects increased tensions between municipal authorities and communities over the ownership of and access to collective lands. Examples include the legal disputes between the Cofradía de San José and the municipality of San José Poaquil, Chimaltenango, over the administration of a communal forest, and that of the Kaqchikel authorities in the municipality of Chuarrancho, Guatemala, in relation to the lands that were titled to the community in the nineteenth century. The decision by the Third Appeals Court of Civil and Commerce Law in the Chuarrancho case[44] further establishes an important legal precedent in the recognition of collective lands and traditional authorities, demonstrating that justice for indigenous peoples can be achieved through the national justice system. These cases were supported by the strategic litigation component of the Norwegian-funded Maya Programme.

63. Approval of licenses for mining and energy projects continued to generate conflict. In the mining site of El Escobal (San Rafael las Flores, Santa Rosa), peaceful anti-mining protests involving neighbouring communities were held, but there were also recurring outbreaks of violence. In January, two private security guards were killed by armed persons. In April, six villagers were injured by security guards, one policeman was killed in San Rafael and 25 police officers were detained by the communities for 14 hours in Xalapán. These incidents led to the declaration of a state of emergency in May. In July, four cement-plant workers in San Juan Sacatepéquez were attacked with machetes in Santa Fe Ocaña. In August, during the visit of the Rapporteur on the Rights of Indigenous Peoples of the Inter-American Commission on Human Rights, two children were shot dead by an unknown gunman in the Q'eqchi' community of Monte Olivo, Cobán, which opposes the Santa Rita hydroelectric project. In Santa Cruz Barillas, Huehuetenango, the detention in September of a leader opposed to a hydroelectric project led to renewed protests and roadblocks in the region — one soldier was killed and a community member injured.

64. Several initiatives were undertaken by the Government to solve conflicts, such as round-table discussions or the provision of voluntary royalties. Some of these initiatives

[42] A/HRC/22/17/Add.1, para. 66.
[43] Case file 266-2012, p. 18.
[44] Case file 01044-2013-363.

succeeded, at least temporarily, in reducing tensions. In June, the President inaugurated a round-table discussion concerning the El Tambor mining project, in San José del Golfo and San Pedro Ayampuc, with the participation of the Human Rights Ombudsman and the Representative of the United Nations High Commissioner for Human Rights in Guatemala. In October, a round-table discussion continued in Barillas. The Government took steps to strengthen the Presidential Commission for the National System of Dialogue, particularly through the adoption of Government Order 166-2013, which builds on a preventive approach and is aimed at strengthening the conflict-management capacities of authorities at local and departmental levels.

IX. Economic and social rights

65. In view of the concentration of poverty and extreme poverty in rural areas (71 per cent of the rural population is poor compared to 35 per cent of the urban population), and despite opposition by powerful sectors, the Government took decisive steps towards the implementation of the National Policy for Comprehensive Rural Development with the creation of the Rural Development Cabinet and the adoption of a plan of action targeted at rural populations living in poverty. This policy is recognition that private investment alone, in rural areas, is not sufficient to promote inclusive human development, and that comprehensive measures are needed to support family agriculture.

66. In compliance with the agreements reached as a consequence of the 2012 Indigenous, Peasant and Popular March, monitored by OHCHR-Guatemala as honorary witness,[45] the Government granted land for the relocation of 140 families that had been evicted from the Polochic Valley in 2011[46] and reiterated its commitment to relocate the remaining 628 families.

67. Regarding access to land, FONTIERRAS resolved 47 of the 123 cases of agrarian debt by granting subsidies that covered, on average, 77 per cent of individual debt. However, due to the low budget allocated to the fund, the land purchase programme has been discontinued. Such issues indicate the need to reformulate agrarian policies in accordance with the voluntary guidelines on land tenure prepared by the Food and Agriculture Organization of the United Nations.[47]

A. Right to food

68. Malnutrition rates continue to be of grave concern. The 13,193 cases of acute malnutrition in children under five reflect a 15 per cent increase in comparison with 2012.[48] The coverage of the Zero Hunger Plan reached 166 priority municipalities and engaged local authorities in the implementation of the plan. The information and monitoring system on food security improved. The budget of the "1,000 Day Window" programme, the main component of the Plan, was doubled and implementation rates improved.[49]

69. Despite progress, the Human Rights Ombudsman confirmed the persistence of serious obstacles to the implementation of the Zero Hunger Plan in some of the poorest and

[45] A/HRC/22/17/Add.1, para. 49.
[46] See www.oacnudh.org.gt/documentos/informes/Estudio_desalojos_Polochic_2013.pdf.
[47] See www.fao.org/docrep/016/i2801e/i2801e.pdf.
[48] SESAN, *Pronóstico de Seguridad Alimentaria y Nutricional* (September 2013–November 2013), p. 3.
[49] According to the General Revenues and Expenditures Budget for Fiscal Year 2013, Q633 million were allocated to the programme. At 31 August, 65 per cent of the resources had been disbursed.

most remote municipalities. Issues identified include a lack of medicine and micronutrients and insufficient numbers of health care workers.[50] The "Mi bono seguro" programme, launched by the Ministry of Social Development, reported low budgetary execution (52 per cent as at November), as well as delays in the delivery of conditional cash transfers. In order to meet its goals, the programme must focus on the structural issues that contribute to malnutrition rates, such as impediments to food production, to income-generation, to the payment of minimum wages and to the improvement of rural infrastructure.[51] The impact of the rust plague on coffee crops during 2013 has compounded the situation – an estimated 75 per cent of temporary workers and 77 per cent of small coffee growers now face food insecurity.[52]

B. Labour rights

70. In the context of an ILO mission and the Dominican Republic – Central America – United States Free Trade Agreement, measures were taken to improve compliance with labour standards.[53] The Ministry of Labour adopted regulations to improve monitoring practices in critical areas.[54] However, if more resources are not allocated to the Labour Inspectorate, the implementation of the regulations will be limited.

71. The Ministry of Labour inspected agricultural, textile and security companies, as well as sectors with high levels of child labour. A total of 640 agricultural companies were inspected, of which 26 per cent did not pay the minimum wage, and 20 per cent did not enrol their workers in the Guatemalan Social Security Institute (IGSS).[55] Out of the 1,386 security companies inspected in 2013, 1,042 failed to pay the minimum wage and 843 companies did not enrol their workers in the IGSS.

72. The situation of domestic workers did not improve during the year. It is estimated that 60 per cent of such workers earn salaries under the minimum wage, 98 per cent have no employment contract, and only 1 per cent were enrolled in the IGSS.[56] The ratification of ILO Convention No. 189 (2011) concerning Decent Work for Domestic Workers would contribute to eliminating discriminatory treatment.

73. In September, an ILO high-level tripartite mission visited the country to assess the need for a commission of inquiry on freedom of association.[57] The mission noted the involvement of CICIG in the investigation of 20 of the 58 cases of killings of trade unionists previously brought before the ILO. The mission also noted the signing of an agreement between the Attorney General's Office and trade unions to investigate the cases. However, the mission reported that no investigations had led to sentencing. Trade unions submitted eight additional cases of killings in 2013.

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[50] Report of the Human Rights Ombudsman on the mission to monitor the implementation of the Zero Hunger Plan of the municipalities of San Mateo Ixtatán and San Miguel Alcatán (Huehuetenango), Olopa (Chiquimula) and Purulhá (Baja Verapaz), 2013.

[51] World Food Programme et al., *Evaluación de Seguridad Alimentaria en Emergencias* (2013).

[52] Ibid., p. 29.

[53] Implementation Plan agreed between the Government of the United States of America and the Government of Guatemala, April 2013.

[54] See www.mintrabajo.gob.gt/index.php/leyes-conveniosyacuerdos/documentos-dr-cafta.

[55] See www.mintrabajo.gob.gt/images/organizacion/DR-CAFTA/Estadisticas2013/PLAN_OPERATIVO_MAYO_2013_AGRO-EXPORTADOR-MAQUILA.pdf.

[56] Asociación de Trabajadoras del Hogar a Domicilio y de Maquila (ATRAHDOM) and Solidarity Center-American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), Domestic work in Central America (2013).

[57] Conclusions of the high-level tripartite mission to Guatemala, September 2013.

74. The President sent a bill to Congress proposing reforms to the Labour Code to establish a procedure by which only labour courts could sanction employers for breaches of labour standards.[58] However, the ILO mission recommended that Congress adopt legislation enabling the Labour Inspectorate to directly impose administrative sanctions.

C. Right to housing

75. Shortcomings in the enjoyment of the right to adequate housing were evidenced by a substantial housing deficit (1,501,166 homes),[59] as well as in the number of irregular urban settlements (over 400). The budget allocation for the Housing Fund (FOPAVI) proved insufficient to address the situation.[60]

76. The case of La Palangana, involving the relocation of 470 families that were occupying a plot of land in the capital, illustrates the existing challenges in the implementation of the Housing Law.[61] Only 254 of those families received subsidies through the Fund's housing subsidy programme. Due to administrative problems the families were relocated to a plot of land with inadequate living conditions, as the planned construction work had not been undertaken.

X. Business and human rights

77. In 2013, the organized business sector supported policies on education and the fight against malnutrition. In October, at the National Meeting of Business Leaders, the "Mejoremos Guate" initiative led to the signing of a human development pact involving the political parties represented in Congress. The High Commissioner hopes that this trend towards implementing corporate social responsibility will gradually incorporate the responsibility to respect human rights. This entails identifying, preventing, mitigating and accounting for the negative impacts of business activities on human rights, especially indigenous peoples' rights.

78. The process towards the establishment of a Global Compact Local Network continued. The High Commissioner welcomes this development and encourages business companies as well as civil society stakeholders to adhere to the principles of the Global Compact, particularly those related to the respect for universally recognized human rights.

XI. Activities of the Office of the United Nations High Commissioner for Human Rights in Guatemala

79. OHCHR-Guatemala conducted 46 missions throughout the country to monitor the human rights situation, and held meetings with authorities, social organizations, victims and their families, and witnesses to follow up on alleged or confirmed human rights violations. It also monitored judicial proceedings in paradigmatic cases.

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[58] Initiative No. 4703, which would amend the Labour Code (Congressional Decree 1441).

[59] *Actualización del Déficit Habitacional en Guatemala*, prepared by the Fund for Local Development in Guatemala (FDLG), 2012.

[60] The FOPAVI budget was only 7.78 per cent of the budget of the Ministry of Communications, Infrastructure and Housing.

[61] Decree 9-2012.

80. OHCHR-Guatemala provided technical assistance to Congress on reforms to the Law on Nominating Commissions; the creation of the Commission on the Search for Disappeared Persons; implementation of the Rome Statute of the International Criminal Court; ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and of the International Convention for the Protection of All Persons from Enforced Disappearance; and a bill on community media.

81. OHCHR-Guatemala provided training to criminal judges from around the country, judicial officers of tribunals for children and adolescents, judges focused on high-risk cases, and Supreme Court and Constitutional Court legal clerks. The Office continued to support the thematic compilation of international standards for the Constitutional Court's website and organized seminars with magistrates of the Constitutional Court and of the Supreme Court's Criminal Chamber.

82. OHCHR-Guatemala provided assistance to the Ministry of Labour in drafting an inspection protocol for agricultural workers and to the National Council for Persons with Disabilities (CONADI) in creating a legislative commission on persons with disabilities. The Office provided training on indigenous peoples' rights to the Ministry of the Environment and Natural Resources and to the Ministry of Energy and Mining.

83. Technical assistance was provided to the Human Rights Ombudsman in order to strengthen the institution's regional offices, improve methodologies and procedures for the investigation of human rights abuses, and foster the implementation of a human rights-based approach in the analysis of social conflicts. Technical assistance was provided to the Amparos and Appeals Unit of the Attorney General's Office in the areas of transitional justice, children's rights, and rights of lesbian, gay, bisexual, transsexual and intersex (LGBTI) persons, and to the Department for Indigenous Peoples.

84. Technical assistance was also provided to civil society organizations working in various areas, such as economic, social and cultural rights, transitional justice, the prevention of torture, the rights of persons with disabilities, LGBTI persons, migrants and indigenous peoples.

85. OHCHR-Guatemala facilitated dialogue between indigenous leaders and authorities, and provided technical assistance to the Council of Peoples of the West, to the 48 Cantones of Totonicapán, to the Coordinadora Nacional de Viudas de Guatemala, and to the Ixil indigenous authorities.

86. OHCHR-Guatemala concluded the first phase of the Maya Programme (funded by Norway), which included training on strategic litigation in indigenous rights cases. Partner organizations filed 18 cases before Guatemalan courts.

87. OHCHR-Guatemala convened a discussion group on transitional justice and provided advice to the UNDP Transitional Justice Programme in Guatemala; participated in working groups with United Nations agencies and donor countries, and provided technical assistance to the Peacebuilding Fund. Together with UNESCO, OHCHR-Guatemala organized a national consultation with indigenous peoples concerning the United Nations development agenda beyond 2015 and participated in the preparation of the United Nations Development Assistance Framework for 2015–2019.

88. OHCHR-Guatemala organized public forums on weapons control, implementation of international standards, nominating commissions, LGBTI rights, and an inter-agency presentation of a report on evictions in the Polochic Valley.

89. In general, OHCHR-Guatemala promoted public debates on human rights-related issues through statements by the High Commissioner, press releases and public statements or interviews, messages from special procedures of the Human Rights Council, and the use of social networks. It presented and distributed the report of the High Commissioner on the

situation of human rights in Guatemala (A/HRC/22/17/Add.1) at the twenty-second session of the Human Rights Council, and disseminated publications and educational material through its Documentation Centre. It continued to promote respect for diversity with the photo exhibit "Guatemala Diversa" nationwide, and in various forums and conferences. It collaborated with the Theatre Festival on Human Rights and the International Film Festival on Memory, Truth and Justice.

XII. Cooperation with human rights protection mechanisms

90. In March, the Human Rights Council adopted the outcome of the second universal periodic review of Guatemala (A/HRC/22/8). Guatemala received 138 recommendations, accepting 111 and taking note of 27 (A/HRC/22/8/Add.1). In particular, the State pledged to redesign the human rights institutional system and strengthen the specialized jurisdiction to protect women, to develop policies for the prevention of violence, and to develop a protection programme for journalists. It also committed to maintaining its permanent system for follow-up to recommendations, in cooperation with civil society, and to submit a mid-term implementation report. The High Commissioner reiterates her willingness to provide technical assistance to support the Government in implementing recommendations from all United Nations human rights mechanisms, including those of the universal period review.

91. The Committee against Torture adopted its concluding observations on Guatemala in May (CAT/C/GTM/CO/5-6), noting the lack of progress in the definition of the crime of torture, in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, despite its previous recommendations and Constitutional Court resolution 1822-2011. The Committee further stated the need to designate the members of the national preventive mechanism.

92. With the involvement of CONADI and technical assistance of OHCHR-Guatemala, the State submitted its first report to the Committee on the Rights of Persons with Disabilities (CRPD/C/GTM/1). The report signalled serious difficulties in the implementation of the relevant instruments, such as the Law for Persons with Disabilities and the National Policy for Persons with Disabilities, due to limited budget allocation, the lack of social awareness, and the absence of specific data, among other reasons.

93. The Government will be providing dates for the visits requested by several special procedures mandate holders.

XIII. Recommendations

94. **The United Nations High Commissioner for Human Rights urges the State to implement, in a coordinated manner and in consultation with civil society, the recommendations made in her previous reports, as well as the recommendations from United Nations human rights mechanisms, including the universal periodic review.**

95. **In the light of the situation, as observed by OHCHR-Guatemala, the High Commissioner would like to make the following recommendations.**

Justice and security

96. **The High Commissioner:**

(a) Calls on the nominating commissions to guarantee the honourableness and professional excellence of selected candidates, in compliance with the principles of

objectivity, transparency and accountability, and to ensure the representation of indigenous peoples and women;

(b) Recommends that the State fully implement the Law of the General Directorate for Criminal Investigation;

(c) Recommends that the State ensure that the National Institute of Forensic Science is allocated adequate resources to carry out its work;

(d) Taking into account the important role of high-risk courts in the fight against impunity, recommends that the Supreme Court of Justice continue to strengthen them;

(e) Encourages Congress to adopt the amendments to the Law on the Judicial Career and the Statutory Law of the Attorney General's Office, ensuring their consistency with international standards, as well as to appoint the members of the Council of the Attorney General's Office;

(f) Recommends that Congress ratify the International Convention for the Protection of All Persons from Enforced Disappearance as a guarantee of non-recurrence;

(g) Recommends that the Government support the proposals of the National Commission for Police Reform and gradually remove the army from citizen-security tasks. The High Commissioner further recommends that the State formulate and implement a disarmament policy.

Human rights defenders

97. The High Commissioner recommends that the State guarantee that human rights defenders can carry out their activities freely and safely; ensure a transparent, comprehensive and effective protection mechanism; and, in response to discrediting media campaigns, publicly recognize the importance of their role.

Indigenous peoples

98. The High Commissioner encourages the State, in the context of the debate on the Mining Law reform, to review, in consultation with indigenous peoples, the legislative and institutional framework related to resource development projects, in order to reinforce social and environmental safeguards.

Women and girls

99. The High Commissioner:

(a) Recommends that the State allocate sufficient resources to the specialized tribunals on femicide and other forms of violence against women and expand their coverage;

(b) Encourages the State to continue its efforts in the prosecution of cases of femicide and other forms of violence against women; to ensure that all women victims of violence, especially indigenous and rural women, have access to justice; and to ensure adequate resources for Comprehensive Support Centres for Women Survivors of Violence.

Persons with disabilities

100. **The High Commissioner calls on the State to urgently comply with the precautionary measures granted by the Inter-American Commission on Human Rights to 334 patients of the Federico Mora National Mental Health Hospital, as part of the measures required to improve their human rights situation.**

Economic and social rights

101. **The High Commissioner encourages the Government to guarantee the effectiveness of the plan for the implementation of the rural development policy by extending the coverage and allocation of the Family Agriculture Programme under the Ministry of Agriculture, Livestock and Food and aligning the Ministry of Economy's programmes with the plan's objectives. The High Commissioner also calls upon Congress to adopt the draft law on rural development, in order to ensure sustainability.**

Business and human rights

102. **The High Commissioner calls on companies, especially those whose activities may bear a greater risk of social conflict, to align their policies with the Guiding Principles on Business and Human Rights, in order to prevent, mitigate and remedy the potential negative impact of their operations.**

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Annual report of the United Nations High Commissioner for Human Rights

Addendum

Report of the United Nations High Commissioner for Human Rights on the activities of her office in the Plurinational State of Bolivia* **

Summary

The present report provides an overview of the human rights situation in the Plurinational State of Bolivia and the work undertaken by the Office of the United Nations High Commissioner for Human Rights in the country during 2013.

The Bolivian economy performed positively during 2013. Levels of poverty and extreme poverty were reduced. The country surpassed the Millennium Development Goal on the right to safe drinking water two years before the deadline, and the school dropout rate at the primary level continued to decrease.

The country continued to develop measures to combat persisting racism and all forms of discrimination. The principles of non-discrimination were included in the communications programmes of public entities. The comprehensive implementation of the Policy of the Plurinational State of Bolivia against Racism and All Forms of Discrimination (Plan of Action 2012–2015) and the allocation of more resources to that end are, however, pending.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is being issued in English and Spanish only.

** The present document is submitted late in order to reflect the most recent information.

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Protecting the rights of indigenous peoples continues to present a challenge. The elaboration of a consensus draft legal framework on the right to consultation in conformity with international standards is noteworthy. Nevertheless, the lack of consultation on mining is a cause for concern.

Comprehensive Law No. 348 on Guaranteeing Women a Life Free from Violence was promulgated. It represents an important step towards the elimination of gender violence, which is on the increase. Given the situation, urgent implementation of the law is indispensable. The judicial branch (Órgano Judicial), the School for Judges and the Public Prosecutor's Office developed an accelerated training process for judges and prosecutors on the law's application.

Many measures were taken to respond to the profound crisis in the administration of justice, including the analysis of structural problems with a view to improving access to justice, judicial independence and transparency, and institutional management. Delays, corruption, impunity and lack of resources in the judicial system persist. The office continues to monitor emblematic criminal proceedings, where progress is slow.

The reduction in complaints concerning the excessive use by the police of force in the context of social conflicts deserves mention. In the police and the military, cases of abuse by officials against subordinates during training exercises were registered, some serious enough to affect the right to life. Regarding the prison system, critical overcrowding in prisons and the excessive use of pretrial detention continue.

The present report describes activities conducted by the office and includes 12 recommendations formulated by the High Commissioner to contribute to the improvement of the human rights situation in the Plurinational State of Bolivia.

Annex

[English and Spanish only]

Report of the United Nations High Commissioner for Human Rights on the activities of her office in the Plurinational State of Bolivia

Contents

		Paragraphs	*Page*
I.	Introduction	1	4
II.	National context	2–8	4
III.	Human rights situation	9–82	5
	A. Racism and discrimination	9–15	5
	B. Indigenous peoples' rights	16–29	6
	C. Economic and social rights	30–36	8
	D. Women's rights	37–44	9
	E. Administration of justice and the fight against impunity	45–64	10
	F. Rights of victims of unconstitutional regimes	65–67	13
	G. Right to life and physical integrity	68–74	14
	H. Right to personal liberty and the situation in prisons	75–78	15
	I. Human rights defenders and freedom of expression	79–82	16
IV.	Main activities of the office	83–92	16
V.	Recommendations	93	18

I. Introduction

1. In February 2007, the Office of the United Nations High Commissioner for Human Rights signed an agreement with the Government of Bolivia to establish a country office with a mandate to monitor and report on the human rights situation in the country and to provide technical assistance to State institutions and civil society organizations. The agreement was approved by Congress on 13 July 2007 and renewed for a second time, in August 2013, until 21 August 2015.

II. National context

2. On 22 January 2013, during the presentation of his performance report to the Plurinational Legislative Assembly, the President of the Plurinational State of Bolivia, Evo Morales Ayma, introduced the 13 fundamental pillars of the Patriotic Agenda 2025,[1] which focus primarily on the eradication of extreme poverty, the provision of basic public services, food security, sovereignty and equality. The Agenda was the subject of a consultation process throughout the country.

3. In April, the Plurinational Constitutional Court ruled on the constitutionality of the draft of Implementing Law No. 381, finding the participation of President Morales and the Vice-President, Álvaro García Linera, in the next elections to be constitutional, given that re-election would represent the second mandate since the adoption of the 2009 Constitution. The ruling was criticized by the political opposition, who considered that the President and Vice-President would thus be allowed a third consecutive mandate.

4. In July, the results of the 2012 National Population and Housing Census were published. Discrepancies between those results and the preliminary results made public in January 2013 caused controversy and protests. The final results reveal a very low rate of increase in the population of some departments and major cities, and indicate that the percentage of the population self-identifying as indigenous decreased from 62 to 41 per cent.[2] At the request of the Government, a delegation of the Latin American and Caribbean Demographic Centre, an autonomous branch of the Economic Commission for Latin America and the Caribbean (ECLAC), visited the Plurinational State of Bolivia in August to initiate a post-census evaluation.

5. The Government of the Plurinational State of Bolivia transmitted a complaint to the United Nations High Commissioner for Human Rights in relation to the denial of airspace by several European countries when President Morales and his delegation were returning from Moscow to La Paz on 2 July. The allegations of human rights violations were transmitted to the special procedures of the Human Rights Council.

6. Also in July, the Plurinational State of Bolivia presided at the first session of the open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas, held in Geneva.

7. On 2 April, the Plurinational State of Bolivia acceded to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and, on 12 July,

[1] The text of the President's remarks is available from http://comunicacion.presidencia.gob.bo/docprensa/pdf/20130123-11-36-55.pdf (Spanish only).

[2] As compared to figures from the 2001 census. National Institute for Statistics (INE), 2012 National Population and Housing Census.

acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

8. During 2013, the Plurinational State of Bolivia was reviewed by three treaty bodies: the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (16 and 17 April), the Committee against Torture (16 and 17 May) and the Human Rights Committee (14 and 16 October).

III. Human rights situation

A. Racism and discrimination

9. The Plurinational State of Bolivia continued to develop measures to combat racism and other forms of discrimination. Public institutions included the principles of non-discrimination in their communications programmes and the majority of media outlets stepped up their prevention campaigns. The Ministry of Education issued regulations prohibiting discrimination in schools, and the principles of non-discrimination are on display in numerous private and public locations.

10. The implementation of the Policy of the Plurinational State of Bolivia against Racism and All Forms of Discrimination (Plan of Action 2012–2015) registered limited progress, primarily because the Plan had not been formally adopted by the executive branch.[3] The National Committee against Racism and All Forms of Discrimination, through its communications with the 14 ministries responsible for implementing the 17 programmes contained in the Plan of Action, noted that ministry officials had limited knowledge about the Plan and their respective responsibilities, and also noted the lack of an implementation strategy and corresponding institutional adjustments. In 2014, the National Committee will monitor the Plan's implementation on the basis of indicators.[4]

11. The budget allocation for the National Committee has been insufficient for its institutional development and for the implementation of the Plan of Action. The National Committee was able to conduct only one annual session, thus failing to comply with its regulations, which call for a minimum of two sessions.

12. The Directorate-General for the Fight against Racism and All Forms of Discrimination reported that it had received 151 complaints of racism and/or discrimination, for the most part in urban areas and in the public service, relating to: sexual orientation (21); level of schooling (19); physical appearance (19); cultural identity (17); provenance (14); ideology (14); and age, disability or religion (25). Another 22 cases were dismissed. Only three were sent to the Public Prosecutor's Office, including one involving violence against a member of the lesbian, gay, bisexual, transgender and intersex community.

13. The office is concerned about the intolerance against the lesbian, gay, bisexual, transgender and intersex community expressed by members of the Sucre Municipal Council during the elaboration of its Charter, namely, the members' rejection of that community and their failure to include specific policies of benefit to it. The Human Rights Committee expressed concern about impunity for acts of violence and discrimination related to sexual orientation and gender identity (CCPR/C/BOL/CO/3, para. 7).

[3] Resolution 1/2012, National Committee against Racism and All Forms of Discrimination.
[4] Resolution 4/2013, National Committee against Racism and All Forms of Discrimination.

14. The office welcomes the establishment by the Ministry of Education of the Institute for Language and Culture of the Guaraní People and the Institute for Language and Culture of Afro-Bolivian People, with the objective of developing the capacity for research and dissemination of information on the history and culture of those peoples, thus contributing to their right to cultural identity.

15. On 8 May, Law No. 370 on Migration was enacted, setting out provisions relating to the prevention of harassment and gender and sexual violence, as well as guarantees for the reunification of migrant families. Measures are still needed to prevent the dissemination in the mass media, including by the police, of stereotypes of foreigners suspected of involvement in crime. The Committee on Migrant Workers expressed its concern regarding the persistence of discrimination against migrants by the security forces (CMW/C/BOL/CO/2 and Corr.1, para. 22).

B. Indigenous peoples' rights

16. The situation of indigenous peoples' rights continues to present a challenge. One step forward has been the elaboration of a draft law on prior, free and informed consent and consultation of indigenous peoples, led by the Ministry of the Interior during an 18-month process consisting of three phases: elaboration, dissemination and systematization. The systematized proposal was approved by the majority of indigenous peoples' organizations and is in line with international standards. With the agreement of those organizations, issues relating to compensation and participation in benefits were deferred to later discussions regarding new rules on mining and hydrocarbons.

17. The office continues to be concerned by the lack of consultation of indigenous peoples with regard to mining. The approaches by the Ministry of Mining and Metallurgy towards indigenous representatives did not generate the climate of trust required to draft a law to regulate consultations in that field.

18. In the area of hydrocarbons, the office monitored the implementation of the right to consultation in two emblematic cases: Alto Parapetí and Takovo Mora. The office observed that relevant information was not always presented to communities in an accessible, timely and complete manner and in their own native language.

19. In Alto Parapetí, the consultation was initiated after a private oil company had begun demarcating land with fencing, which had a negative impact on the affected communities. Additionally, through its monitoring work, the office registered some interference in the activity of indigenous organizations by civil servants and company staff and the conditioning of the provision of basic services on the signature of agreements.

20. During the consultation in Takovo Mora, the authorities annulled the initial agreement, thus generating a situation of reduced credibility and trust, which was later improved. Although the affected communities selected their representatives according to their customs in order to facilitate the consultation process, the Ministry did not employ the representatives, arguing that under the rules for public contracting, a person must have a high school certificate to receive remuneration from the State. This could constitute a violation of the rights of indigenous peoples to decide according to their own procedures, as set out in International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

21. In the above-mentioned cases, the Ministry of Hydrocarbons and Energy was unable to comply fully with the right to consultation or with all its obligations to protect indigenous peoples from actions of third party contractors which could violate their rights. Nevertheless, the office recognizes the good will demonstrated and initiatives taken by the

Ministry, through its Vice-Ministry for Energy Development, to improve its performance in consultation processes through training and other technical cooperation efforts.

22. During 2013, initiatives to provide public services to communities in the Isiboro Sécure National Park and Indigenous Territory (TIPNIS) were developed. With regard to the 2012 consultation concerning the proposed construction of a highway in TIPNIS, three reports were presented: one by the Ministry of Public Works, Services and Housing and the Ministry of the Environment and Water, the entities responsible for conducting the consultation; one by the Intercultural Service for Strengthening Democracy (SIFDE), the entity of the Plurinational Electoral Branch responsible for monitoring consultation processes; and one by non-governmental organizations, namely, the Permanent Human Rights Assembly of Bolivia (APDHB) and the International Federation for Human Rights (FIDH).

23. The reports by the ministries and SIFDE reveal that information relating to the inviolability of TIPNIS, the highway construction and measures for safeguarding and developing the territory was provided to the majority of communities on the very day of the consultation and that no social or environmental impact studies were presented. The reports also reveal a context of polarization and threats against those responsible for conducting the consultation. Additionally, some consultations lasted only a few hours and others were conducted at night.

24. According to SIFDE, the consultation process was conducted in 58 of the 69 communities in TIPNIS: 15 agreed to the highway construction without conditions; 41 agreed with conditions, including guarantees and safeguards; 2 rejected the initiative; and 11 impeded the access of the consultation teams.

25. In their report, APDHB and FIDH detailed the concerns of 36 communities they visited during a two-week period, namely, the lack of agreement between the ministries and the TIPNIS Subcentral, one of the three representative organizations in the territory, for the realization of the consultation; the creation of parallel organizations in some communities where the consultation had been rejected and/or prevented; the organization of meetings outside the communities; and the delivery of assistance projects while the consultation was ongoing.

26. More than two years after the police intervention against participants in the Eighth Indigenous March to Defend the Isiboro Sécure National Park and Indigenous Territory in Chaparina, Beni, on 21 September 2011, the Public Prosecutor's Office has brought only two people into custody for investigation. The office is concerned about the slow pace of the judicial process.

27. In June, violence was registered in TIPNIS, when leaders of the TIPNIS Subcentral prevented a meeting between community leaders (*corregidores*), accusing them of not respecting the territory's rules and of supporting the governmental highway construction project. Gumercindo Pradel, president of the Indigenous Council of the South (CONISUR), affiliated with the Confederation of Indigenous Peoples of Bolivia (CIDOB), was attacked. He accused TIPNIS Subcentral representatives of making an attempt on his life and considers that the ordinary justice system should punish the perpetrators. However, the TIPNIS Subcentral representatives consider that the incident occurred in the framework of the application of indigenous justice and therefore filed a conflict of jurisdiction suit before the Plurinational Constitutional Court, which ruled that both justice systems should suspend proceedings relating to the case pending determination of the applicable jurisdiction.

28. The office welcomes the enactment, on 4 December, of Law No. 450 on the Protection of Highly Vulnerable Indigenous Nations and Peoples, aimed at establishing mechanisms and policies to prevent, protect and strengthen safeguards for the systems and ways of life of that population. It will be necessary for the implementing regulations and

complementary rules to guarantee the collective rights of those peoples in an indivisible, comprehensive and interdependent way.

29. The office is concerned about the persistence of forced labour and servitude of numerous Guaraní families.[5] It noted a lack of follow-up to the comprehensive policies under the Transitional Interministerial Plan; they should have been implemented in accordance with a comprehensive development plan for the Guaraní Peoples, which is still pending approval and implementation.

C. Economic and social rights

30. According to ECLAC, the economy of the Plurinational State of Bolivia performed positively in 2013. During the first trimester, the global index of economic activity registered 6 per cent growth, while the Government increased its tax collection by 19 per cent compared to the first trimester of 2012,[6] thus permitting the continuation and extension of social programmes.

31. In December 2012, 78.9 per cent of the population had access to safe drinking water. The country exceeded the Millennium Development Goal on the right to safe drinking water[7] two years before the deadline, thanks to the presidential programmes Mi Agua and Mi Agua II. In relation to the right to sanitation, it is still necessary to strengthen action to accelerate progress.

32. With regard to the right to housing, in 2013, 16,000 housing units with basic services were constructed; with respect to allocation, priority was given to vulnerable groups. Additionally, 866 housing units for victims of natural disasters related to the La Niña phenomenon during the period 2010–2012 were allocated.[8]

33. Regarding the right to education, the Ministry of Education established the obligation of regular schools to enrol children with disabilities and to implement specialized syllabuses and methodologies for students with visual, auditory and mental disabilities.[9] The Ministry of Labour, Employment and Social Security incorporated 409 people with disabilities into the workforce of public institutions. The office welcomes both measures, which represent progress in favour of vulnerable groups.

34. The Juancito Pinto benefit, a subsidy to encourage school attendance, was expanded to include students up to the fourth year of secondary school and students of specialized schools without age or grade limits. According to the Ministry of Education, the school dropout rate at the primary level was reduced from 1.82 per cent in 2011 to 1.69 per cent in 2012.

35. High rates of violence against children were reported in a Ministry of Education study on violence, ill-treatment and abuse in schools, which revealed that 88 per cent of the school population suffered some form of physical or psychological violence. The majority of victims are girls and adolescents. Male students, followed by teachers and fathers, are the principal agents of violence. In response, the Ministry elaborated a plurinational plan to prevent all forms of violence in the school environment, currently being validated by the

[5] Approximately 600 families, according to the Human Rights Committee (CCPR/C/BOL/CO/3), para. 18.

[6] ECLAC, *Economic Survey of Latin America and the Caribbean 2013* (United Nations publication, Sales No. E.13.II.G.3).

[7] 75 per cent coverage by 2015.

[8] Ministry of Public Works, Services and Housing.

[9] Ministerial resolution 1/2013, 2 January 2013.

educational community. The office praises that initiative, but remains concerned about the study's findings.

36. Indicators for six human rights (food, education, health, work, housing and women's right to a life free of violence), developed under the leadership of the National Institute for Statistics (INE) and the Ministry of Justice, with the support of the office, are now in use by 25 public institutions. Approximately 335 indicators have been developed and 30 per cent of the data collected and is available. The development of indicators for the right to water was initiated.

D. Women's rights

37. On 9 March, Comprehensive Law No. 348 on Guaranteeing Women a Life Free from Violence was promulgated, the result of more than a decade of efforts by women's and other civil society organizations. The High Commissioner welcomed the law's enactment, considering that it broadened women's protection from various forms of violence and made the eradication of violence a State priority.[10] That legislation complements other laws, adopted in 2012, that promote the full exercise of women's rights.[11]

38. Law No. 348 is the first law to provide a comprehensive approach to combating violence against women through prevention, care, protection, prosecution and punishment. The Law criminalizes femicide, thus complying with recommendations made by the High Commissioner in her previous report (A/HRC/22/17/Add.2 and Corr.2, para. 91 (c)) and by the Committee on the Elimination of Discrimination against Women in 2008 (CEDAW/C/BOL/CO/4, paras. 24 and 25).

39. Regarding prosecution and punishment, complaints of violence against women were down by 70 per cent compared to the first semester of 2012.[12] This may be explained by the fact that the legislation that was repealed had provided for multiple channels through which victims could file complaints, under family, administrative or criminal jurisdictions, while the new law permits complaints only through the criminal justice system. Pending the creation of specialized courts and prosecutors' offices, criminal judges and prosecutors have taken on the caseload. Although 592 criminal judges and prosecutors received training on the law, that effort may be insufficient to respond to the problem, given the crisis in the criminal justice system. To ensure an effective implementation of the new legislation, the necessary budgetary resources must be allocated at all corresponding levels of the State.

40. The Plurinational Constitutional Court defined the obligation of the Public Prosecutor's Office to adopt, ex officio, protection measures and programmes for women victims of violence in conformity with international human rights standards.[13] Specialized prosecutor's offices for providing victims of violence and of trafficking with priority attention exist only in the capital city of each department. The creation of specialized prosecutor's offices in the provinces and mobile offices is still pending. The Public

[10] Office of the United Nations High Commissioner for Human Rights, press briefing note, 12 March 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13120&LangID=E.

[11] Law on Harassment and Political Violence against Women, Comprehensive Law against Trafficking in Persons and legislation on women's right to health, and the ratification of International Labour Organization Convention No. 189 (2011) concerning Decent Work for Domestic Workers.

[12] According to the National Statistics Department of the Bolivian Police, 61,251 complaints of violence against women were reported.

[13] Plurinational Constitutional Court judgement SCP 33/2013.

Prosecutor's Office adopted protocols for cases brought under Law No. 348, including measures to protect and assist victims and to prosecute perpetrators of crimes against sexual liberty.

41. The Plurinational State of Bolivia still does not have a specific entity responsible for promoting gender policies in judicial institutions. The office received complaints from two female judges of alleged acts of physical and psychological violence within their own institution, which are currently under investigation by the criminal justice system. At the fourteenth Congress of Female Judges from Ibero-America, Bolivian judges formed a commission to promote gender policies and recommended the creation of gender units within judicial institutions.

42. For the first time, women were promoted to the rank of general, two in the police and one in the Armed Forces, representing a step towards gender equality and equity in police and military institutions.

43. The investigations into the killings of two elected female councillors in 2012, Juana Quispe Apaza of Ancoraimes municipality, La Paz, and Daguimar Rivera Ortiz, of Guayaramerín municipality, Beni, related to their political activity and to the fact that they were women, are still in the pretrial stage (A/HRC/22/17/Add.2 and Corr.2, para. 38). In the first case, two alleged intellectual authors, members of the Acoraimes Municipal Council, have been indicted. In the second, the indictment was expanded to include another elected municipal councillor, but the trial is pending since one judge recused himself and another resigned.

44. In the Plurinational State of Bolivia, abortion is the third most common cause of maternal mortality. According to an investigation by Ipas Bolivia,[14] approximately 185 abortions are carried out daily under conditions of risk.[15] Abortion is criminalized except in cases of rape, sex with a minor and incest or when the life of the mother is at risk, but prior judicial authorization is required (CCPR/C/BOL/CO/3, para. 9), thus limiting access to safe abortion even in those cases. Since 2012, the Plurinational Constitutional Court has been reviewing a constitutional challenge of 13 articles of the Criminal Code, including those criminalizing abortion.

E. Administration of justice and the fight against impunity

45. The office considers that while numerous important measures have been adopted by the judicial authorities elected in 2011, those measures have not yet overcome the profound crisis in the administration of justice, characterized by structural problems such as corruption, delays, insufficient coverage of judicial services throughout the country[16] and limited access to justice by vulnerable sectors of the population. Those and other problems have led to a worrisome judicial backlog and, ultimately, impunity.[17]

46. Among the principal problems faced by the criminal justice system which often lead to violations of the rights of both victims of crime and the accused is the high number of pending cases: 75 per cent of the criminal investigations initiated during 2013 are pending

[14] A non-governmental organization dedicated to ending preventable deaths and disabilities from unsafe abortion.

[15] Ipas Bolivia, *Las cifras hablan* (2011), p. 7.

[16] According to the Council of Magistrates, only 43 per cent of the 339 municipalities have a judge (as at 24 May 2013).

[17] According to the latest data available from the Council of Magistrates, in 2012 the overall accumulated judicial backlog of unresolved cases was 54.92 per cent (396,482 pending cases).

resolution in 2014.[18] Another is the excessive and prolonged use of pretrial detention, in some cases exceeding the maximum penalty possible for the crime under investigation. Corruption is another widespread problem in the judicial system.

47. The insufficient coverage of the judicial system is critical. Only 23 per cent of municipalities have a prosecutor, there are only 69 public defenders nationally and the Institute of Forensic Investigation (IDIF) has only 65 experts and 54 forensic doctors nationally.[19]

48. Other problems in the criminal justice system are related to deficiencies in institutional management and to weak judicial control, including frequent changes of prosecutors and suspension of hearings; limited use of abbreviated procedures; abusive use by the parties of excusals, legal challenges and other dilatory recourses; and suspension of proceedings when one of the parties (generally the victim) does not push the process forward. The Felipe Moza case illustrates those issues. A former civic leader in Tarija, Mr. Moza was indicted for acts representing a danger of destruction and causing serious damage, punishable by up to four and six years of imprisonment, respectively, for his alleged involvement in the explosion of a gas pipeline in 2008 in Yacuiba. He has been held in pretrial detention for the past five years. The office is concerned that his time in detention is already equivalent to the sentence he would have to serve if convicted.

49. In the light of that situation, the judicial branch (comprising the Agro-Environmental Court, the Supreme Court of Justice, the Council of Magistrates and departmental tribunals) and the Public Prosecutor's Office analysed structural problems in the justice system,[20] identifying and adopting response measures, which were included in medium-term strategic institutional plans and in operational plans for 2014.

50. The judicial branch and the Public Prosecutor's Office adopted various institutional guidelines to promote judicial independence, and drafted regulations for their respective professional career systems. The Council of Magistrates and the Public Prosecutor's Office approved regulations on disciplinary procedures. The School for Judges and the School for Prosecutors designed the profile of future judges and prosecutors and their respective syllabuses for their introductory training, into which human rights were mainstreamed.

51. To foster transparency in the administration of justice, the transparency units of the judicial branch and of the Plurinational Constitutional Court conducted mid-year public accountability processes for the second consecutive year and began to coordinate with the Ministry of Institutional Transparency and the Fight against Corruption. The Court approved a Code of Ethics for its personnel and created an Internal Audit Unit.

52. In order to improve access to justice, the Council of Magistrates filled 96 judicial vacancies.[21] Between 2012 and 2013, the number of judges increased by 5 per cent in relation to 2011.[22] The judicial branch designed policies to reduce the high rate of backlog, to be implemented from 2014.

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[18] A total of 127,538 pending cases (Council of Magistrates, 2012).

[19] Judicial branch "National Justice Summit", Sucre, 23 and 24 July; Public Prosecution Service "National Meeting of the Public Prosecution Service", Sucre, 10–12 July, organized with the support of the office.

[20] Judicial branch "National Justice Summit"; Public Prosecutor's Office "National Meeting of the Public Prosecutor's Office".

[21] Public Accountability of the Council of Magistrates, August 2013. Those judges still have interim or substitute status and their designation is subject to internal regulations on the judicial career system.

[22] From 776 judges in 2011 to 815 in 2013.

53. The approved budget of judicial institutions[23] was increased by 13 per cent in relation to 2012. Nevertheless, the budget for justice accounts for only 0.53 per cent of the overall State budget, an amount which is insufficient for the implementation of ongoing reforms needed to address grave insufficiencies and deficiencies in the administration of justice.

54. The Plurinational Constitutional Court delivered several judgements in which it put forward arguments based on human rights. In its judgement SCP No. 137/2013, the Court ruled as unconstitutional article 183.I.4 of the Law on the Judiciary — the article that gave the Council of Magistrates the power to suspend judges from the exercise of their functions following the opening of an official investigation —, arguing the need to protect the right of judges to the presumption of innocence, to due process and to not be subjected to advance punishment. Similarly, in SCP No. 2055/2012, published in 2013, the Court ruled as unconstitutional provisions contained in Framework Law No. 31 on Autonomy and Decentralization that allowed for the suspension of elected authorities following a formal indictment, considering it contrary to the presumption of innocence and the political rights of defendants.

55. Regarding indigenous jurisdiction, the Plurinational Constitutional Court defined criteria for the interpretation of Law No. 73 on Jurisdiction Demarcation concerning the personal, territorial and material competence of indigenous jurisdiction, in conformity with relevant international instruments and the Constitution.[24] The judgement is in line with the relevant recommendations of the Committee on the Elimination of Racial Discrimination (CERD/C/BOL/CO/17-20, para. 22).

56. The office remains concerned about the accumulation of judicial complaints against some members of the political opposition and former public officials, mainly for the crime of corruption. In a positive development, the 2012 ruling of the Plurinational Constitutional Court on the unconstitutionality of the offence of defamation against public officials (*desacato*) led to the dismissal of such cases.

57. In August, the opposition Senator, Roger Pinto, who sought asylum in the Embassy of Brazil in May 2012, crossed the border with the personal support of a Brazilian diplomat and without the authorization of the Government of the Plurinational State of Bolivia. The Senator presented a petition for refugee status in Brazil claiming persecution. The Bolivian authorities have submitted to the Government of Brazil documented evidence in relation to criminal cases against him.

Judicial trials of emblematic cases

58. The office continued to monitor emblematic criminal proceedings. In addition to the general problems in the criminal justice system described above, the office observed that trials in those cases often were of very limited duration, did not begin on schedule, were constantly interrupted by recesses and were conducted in a disorderly fashion, which affected compliance with the right to a fair trial of victims and defendants.

(a) Proceedings against the former President, Gonzalo Sánchez de Lozada, for the tragic events of October 2003 (Black October case)

59. In 2011, two former ministers of the government of former President Sánchez de Lozada and five former members of the military high command were convicted for their

[23] Ministry of Justice, judicial branch, Plurinational Constitutional Tribunal, Public Prosecutor's Office, National Public Defence Service and School for Judges.

[24] See Plurinational Constitutional Court judgement SCP No. 26/2013.

responsibility for acts in 2003 that caused the deaths of more than 60 people and wounded 400. In 2013, the Supreme Court of Justice initiated a second request for the extradition of former President Sánchez de Lozada from the United States of America for those events.

(b) Violent racist events of May 2008 in Sucre

60. On 24 May 2008, an opposition group attempted to prevent the visit of President Morales to Sucre, leading to confrontations with the public security forces. Some 60 indigenous people who supported the visit of the President were held against their will by members of the opposition group and were insulted, beaten, harassed and forced to kneel in the public plaza; several were injured. With regard to judicial proceedings, in February 2013 the court declared, in response to a request from 15 defendants, that the statute of limitations had expired for 5 of the 11 crimes for which they had been charged. The trial is at the stage of statements by defendants. The office echoes the recommendation of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, requesting the Government to intensify its efforts to eradicate impunity in those cases and to improve assistance to victims of racial violence (A/HRC/23/56/Add.1, para. 95).

(c) Massacre at El Porvenir

61. Regarding the trial for the violent incidents of September 2008 in Pando during an indigenous march, which led to the deaths of 13 people and left over 50 injured, conditional house arrest was granted to the principal defendant for health reasons and, for the same reasons, there have been few hearings. The oral proceedings are at the final stage of the presentation of documentary evidence. In April, one of the accused was released from detention after having been deprived of his liberty without a judicial order since December 2010.

(d) Alleged terrorist group dismantled in Santa Cruz

62. On 16 April 2008, an alleged terrorist group was dismantled in the city of Santa Cruz in a police operation in which two foreign nationals were killed. Currently, 39 people have been charged: 22 are facing trial (6 are in detention) and 17 were declared to be fugitives. The case was relocated from Tarija back to Santa Cruz owing to the health problems of one of the accused. The trial is at the stage of the reception of oral declarations of defendants.

63. In its opinion No. 63/2011 of November 2011, the Working Group on Arbitrary Detention qualified as arbitrary the detention, since April 2009, of a Hungarian citizen, Elődd Tóásó. In the framework of the case of the dismantled terrorist group, the opinion was again presented to the Bolivian courts by Mr. Tóásó's lawyers in 2013. The courts denied the petition without any written reasoning or pronouncement on the opinion of the Working Group. The Inter-American Commission on Human Rights was also informed of the case at its 149th session.

64. An opposition legislator accused the main prosecutor responsible for the investigation of the case of manipulating evidence, which may have affected the chain of custody. The public prosecutor later resigned and is currently under investigation for alleged extortion from some of the defendants.

F. Rights of victims of unconstitutional regimes

65. The rights of victims of human rights violations committed during the unconstitutional regimes from 1964 to 1982 have still largely not been addressed, although,

in a positive development, in December the Senate approved a draft bill to create a truth commission. The draft is currently before the Chamber of Deputies, which has announced that consultations will be held with organizations that have relevant experience and interest.

66. With regard to reparation to victims, provided for under Law No. 2640 of 2004, the office remains concerned that a high percentage of reparation requests filed have been dismissed owing to the heavy burden of proof imposed on victims. Additionally, the office regrets that the payments made in cases where reparation was approved cover only 20 per cent of the amount agreed.

67. The remains of Hugo Bohórquez Fernández, a victim of enforced disappearance and member of the National Liberation Army, were returned to his family. However, the whereabouts of more than 150 persons who disappeared between 1964 and 1982 remain unknown. There has been no progress in the criminal proceedings for some of those cases, nor in obtaining access to information contained in military archives, which has led to the impunity of the perpetrators of those crimes.

G. Right to life and physical integrity

68. Although complaints regarding the excessive use of force in the context of social conflicts decreased in 2013, the office is concerned about the slow progress of investigations for cases from the past, in particular those relating to the events in Caranavi in 2010 and in Mallku Khota in 2012.

69. The office is concerned about new cases of alleged ill-treatment by officials of their subordinates, particularly conscripts and cadets, during training in the police and the Armed Forces. In February, in the context of a military training exercise, a sub-lieutenant, Ceooly Espinal Prieto, died under unclear circumstances. The Ombudsman's Office concluded in its final report that the State was responsible for the harm to the physical integrity and, ultimately, the death of sub-lieutenant. The Ombudsman's Office also reported on the case of a conscript, Freddy Rodríguez Uño, who in September was allegedly subjected to torture at a military post in Atocha, Potosí. In November, a police cadet, Cinthia Poma, died, allegedly as a consequence of ill-treatment and punishment inflicted during physical exercise sessions. The investigation into the case continues.

70. In contrast, the Public Prosecutor's Office charged the suspects in the case of a sub-lieutenant, Grover Poma, who died in 2011 as a result of beatings by other soldiers and trainers during military combat training. Nevertheless, the legislative assembly has not yet taken action on the recommendation of the Plurinational Constitutional Court, contained in its ruling No. SCP 2540/2012 on the Poma case, that the Military Criminal Code and the Military Code of Criminal Procedure be adjusted so as to guarantee that human rights violations are judged by the ordinary justice system, in compliance with the Constitution and international standards.

71. The office is concerned that cases of lynching still occur, and is also concerned about the lack of effective initiatives by State authorities at the national, departmental and local levels, including effective public prevention campaigns, to combat that phenomenon. As at September 2013, 37 cases of lynching or attempted lynching had been registered, resulting in 10 deaths, including that of a 17-year-old boy.[25] Lynching tends to occur in the periphery of urban areas with limited or no State presence. Insufficient intervention by the police and the Public Prosecutor's Office hinders the prevention of such incidents and

[25] "Informe sobre el ejercicio de los derechos humanos en el Estado Plurinacional de Bolivia: Defensoría del Pueblo 2013", pp. 50–55.

limits subsequent investigations. Nevertheless, the adoption of Law No. 458 on the Protection of Complainants and Witnesses on 19 December represents progress. The office observed that judicial proceedings have produced insufficient or no results.

72. The legislative assembly has not yet modified the definition of the crime of torture under article 295 of the Criminal Code, which is not in conformity with international standards, either with regard to the elements of the crime or its punishment.

73. According to data provided by the State to the Committee against Torture, the police dealt with 42 individual cases of ill-treatment and torture, while the Public Prosecutor's Office registered 36 complaints between March 2006 and February 2013. The Ombudsman's Office informed the Committee that it had issued 91 decisions related to torture and ill-treatment between 2007 and 2012 (CAT/C/BOL/CO/2, para. 10). The office echoes the recommendations made by the Committee against Torture that the State establish a centralized public register for complaints of torture, which should include information about corresponding investigations, prosecutions and criminal or disciplinary sanctions.[26]

74. On 30 December, Law No. 474 creating the Torture Prevention Service (SEPRET) was adopted. While the law indicates that SEPRET will serve as the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, pending since 2007, the office is concerned that the mechanism's independence will be compromised by its dependence on the Ministry of Justice and that its mandate and powers have not been defined by law.

H. Right to personal liberty and the situation in prisons

75. Structural problems in the prison system continued. Overcrowding and overuse of pretrial detention, with pretrial detainees representing 83.3 per cent of the prison population, are issues of particular concern. According to the Directorate-General of Prisons, there are more than 13,000 inmates in prisons with a capacity for approximately 4,900. The Committee against Torture expressed alarm about the extent of overcrowding and referred to a number of other problems, including cases of sexual violence, particularly against female detainees, restrictions of visiting hours, the transfer of minors from rehabilitation centres and the lack of separation of persons in preventive detention and those convicted of crimes, as well as the need to improve medical attention (CAT/C/BOL/CO/2, para. 18).

76. The situation described above has caused protests by inmates. Through Presidential Decree No. 1723,[27] the Government reopened the possibility of granting pardons and amnesties. Nevertheless, the impact of those measures continues to be limited and other types of measures are urgently required to reduce the prison population.

77. The office is concerned about the lack of effective State control in prisons, which are essentially under the control of the inmates themselves. The authorities have been unable to prevent or control acts of violence. The most serious incident occurred in August in Palmasola Prison in Santa Cruz, when a group of inmates attacked inmates in another

[26] CAT/C/BOL/CO/2, para. 10 and *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 44* (A/56/44), para. 97 (e).

[27] Presidential Decree No. 1145 of 2012 had established and regulated the conditions for a previous period of pardon; Presidential Decree No. 1723 of 2013 established similar conditions for pardons, and in addition included the granting of amnesty for those who were involved in proceedings that could carry prison sentences of fewer than four years.

sector, provoking a fire that killed 35 people, including one boy, and injured more than 50 people.

78. Another cause for concern is the situation of children living in prisons with their detained relatives. According to the Directorate-General of Prisons, as at September, approximately 2,100 children were living in prisons. In June, a riot occurred in San Pedro Prison in La Paz, in reaction to the rape of a 12-year-old girl by her detained relatives. In response, the Government decided to evacuate children from the prison, a measure rejected by inmates. The Ombudsman's Office facilitated the signature of an agreement between detainees of the San Pedro prison and national authorities to evacuate children older than 11 years old. Nevertheless, the Directorate-General of Prisons reported that in October 236 children were still living in San Pedro Prison, of which 98 were between 6 and 13 years old. The office publicly expressed its opposition to that situation, which persists.

I. Human rights defenders and freedom of expression

79. During 2013, fewer attacks against the media, journalists and press workers were reported than in previous years; the cases involved various categories of perpetrators.[28] The most serious case occurred in Caranavi, La Paz, where two journalists of the La Voz de las Mayorías (Voice of the Majority) radio station were the object of attacks and intimidation, and transmission equipment was stolen and furniture burned by residents mobilized in the context of a municipal conflict. Few of the incidents have reached the courts and judicial action has been generally ineffective for those that have.

80. The draft law on transparency and access to public information proposed by the executive branch was sent to the legislative assembly. Although the draft represents significant progress, the office is concerned about the incompatibility of some provisions with international standards, particularly regarding restrictions on access to public information. There is also concern about provisions establishing that additional restrictions may be imposed via decree and about the lack of independence of the institution which would oversee respect for the rights protected under the law.

81. Statements by the Government accusing the Ombudsman, Rolando Villena, of acting in the interests of the opposition, following his request for the removal of a high-level government official in relation to the Chaparina case, raised concern. Following the publication of his 2013 annual report, the Ombudsman expressed concern about the Government's sensitivity to criticism.

82. The office considers that some of the grounds to revoke the legal status of civil society organizations set out in Supreme Decree No. 1597 of 5 June 2013, which regulates Law No. 351 on the Granting of Legal Status to social organizations, non-governmental organizations, foundations and civil non-profit entities, could limit the effective functioning of such entities. The grounds for revoking status relating to public interest and non-compliance with sectoral policies and standards are of particular concern.

IV. Main activities of the office

83. In the framework of the project "Strengthening and increasing the independence of the judicial system in Bolivia", financed by the European Commission and implemented in coordination with the Plurinational Constitutional Court and the judicial branch, the office

[28] According to the Report of Aggressions against Journalists 2013, ONADEM/UNIR Foundation Bolivia, 27 cases were registered between January and October.

helped organize 17 training programmes, including 20 public events, with the participation of 1,794 judicial staff and judges.

84. Under the same project, the office provided technical assistance aimed at strengthening the administration of justice, including to the Council of Magistrates, for its professional career system and disciplinary regime; to the judicial branch, to systematize the jurisprudence of the Supreme Court of Justice and design a communications and transparency policy; and to the Plurinational Constitutional Court, regarding the functioning of departmental coordination units and procedural management guidelines. Conciliation in judicial institutions was also promoted in collaboration with the judicial branch and the Swiss Agency for Development and Cooperation, as was coordination among judicial institutions and between judicial institutions and civil society and indigenous organizations, including through the Judicial Summit and the First National Meeting of Authorities of Indigenous Jurisdiction and the Plurinational Constitutional Court.

85. With the objective of strengthening the right of access to justice of women, the Council of Magistrates, with support from the office, organized the fourteenth Congress of Female Judges from Ibero-America, held from 26 to 28 November in Cochabamba, which concluded with the adoption of an important declaration with action points.

86. In the framework of the joint project "Support for the process of legislative development and implementation of the right to consultation and participation of indigenous peoples in Bolivia", funded by the European Commission, the office conducted, in coordination with other United Nations agencies and national actors, 17 training and public events on the rights of indigenous peoples to consultation, for over 1,000 participants representing 8 public institutions, 45 indigenous organizations, and 4 public and private indigenous universities.

87. Under the same project, the office carried out 33 activities to elaborate, through a participatory methodology, studies of the decision-making systems of the Guaraní of Alto Parapetí, the Suyu Jach'a Karangas and the Mosetén indigenous peoples, with the participation of 760 members of those communities. Additionally, the office conducted 20 missions, amounting to 44 days, to monitor consultation processes in the field of hydrocarbons in Alto Parapetí and Takovo Mora, in order to gather first-hand information about the application of the right to consultation.

88. The office continued to conduct activities in coordination with human rights defenders, organizing the commemoration of the International Day of the World's Indigenous Peoples and technical sessions about their rights, among other activities.

89. In coordination with the Anti-Discrimination Section of the Office of the United Nations High Commissioner for Human Rights in Geneva, the field office supported the National Committee against Racism and All Forms of Discrimination in organizing the first advanced studies course on "Human rights for the prevention of racism and discrimination" for 40 civil servants, which was implemented by the Plurinational School of Public Administration.

90. The office continued to provide technical assistance to the National Committee against Racism and All Forms of Discrimination for the preparation and holding of its regular session, in which 90 per cent of its 60 members participated, issuing nine new resolutions.

91. The office provided technical assistance to the Office of the Deputy Minister for Decolonization for the realization of two national meetings of indigenous public and private universities, with the aim of promoting research on the right to consultation and on racism and discrimination.

92. Regarding the Human Rights Council universal periodic review, the office supported participative processes led by the Ministry of Foreign Affairs and the Ministry of Justice to draft and circulate the State report, promoting the participation of judicial institutions, as well as processes for drafting a civil society report. The office also provided technical assistance to the Ministry of Justice for the elaboration of the new National Human Rights Plan of Action, taking into account recommendations issued under the universal periodic review and by other international mechanisms.

V. Recommendations

93. **The United Nations High Commissioner for Human Rights reiterates her previous recommendations and wishes to make the following recommendations:**

(a) The Government and the Plurinational Legislative Assembly should continue efforts to adopt the draft framework law for the general application of the right to consultation of indigenous peoples developed by the Ministry of the Interior in the framework of international standards and, in the meantime, should ensure respect for that right even in the absence of specific regulations;

(b) The Ministry of Hydrocarbons and Energy should evaluate its practice for conducting consultations, and introduce modifications to guarantee that the realization of such consultations complies fully with relevant international standards;

(c) Relevant authorities should evaluate the results of the consultation conducted in the Isiboro Sécure National Park and Indigenous Territory (TIPNIS) in order to redirect dialogue, taking into account all communities in the territory and processes to facilitate the search for consensus as envisaged in Plurinational Constitutional Court judgement No. 300/2012;

(d) The Government should fully implement the Policy of the Plurinational State of Bolivia against Racism and All Forms of Discrimination (Plan of Action 2012–2015) and increase the allocation of corresponding resources in order to allow for the effective functioning of the National Committee responsible for supervising the Plan;

(e) The national, departmental and municipal authorities should adopt without delay all the necessary measures to implement Comprehensive Law No. 348 on Guaranteeing Women a Life Free from Violence, including the allocation of resources for the creation of specialized courts and public prosecutor's offices, as well as shelters for victims;

(f) The Public Prosecutor's Office and the judiciary should conduct prompt and impartial investigations into and punish those responsible for cases of discrimination and violence against women, including the killing in 2012 of two elected municipal officials, Juana Quispe Apaza and Daguimar Rivera Ortiz, and investigate the complaints of violence against two female magistrates within their institution;

(g) The judicial branch, the Public Prosecutor's Office and the Plurinational Constitutional Court should define institutional policies with a gender perspective, with a view to improving women's access to justice, the labour conditions of female personnel and women's access to the judicial and public prosecutor's career system, among other policies to reduce existing gender gaps and combat gender-based discrimination;

(h) The legislative branch should implement the recommendation made by the Committee on the Elimination of Racial Discrimination to adjust Law No. 73 on

Jurisdiction Demarcation in conformity with the Constitution and international standards (CERD/C/BOL/CO/17-20, para. 22).

(i) The judicial branch and the Public Prosecutor's Office should continue the process of defining and implementing institutional policies to improve access to justice and judicial transparency and independence and to reduce backlog, including through the implementation of judicial conciliation and the judicial and public prosecutor's career system;

(j) The Ministry of the Economy and Public Finance should allocate adequate resources to the administration of the justice sector to implement the above-mentioned reforms;

(k) The Government should continue to respect the independence of the Ombudsman's Office, facilitate the implementation of its resolutions and recommendations and implement measures to allow human rights defenders and civil society organizations to carry out their work in all domains without undue constraints;

(l) The Government and the legislative assembly should modify Law No. 2640, which determines that the Government assumes only 20 per cent of economic reparations to victims of unconstitutional regimes, such that the Government takes charge of the entire amount of the reparations.